

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MOTORIST MUTUAL	:	CIVIL ACTION
INSURANCE CO.	:	
as subrogee of National	:	
Stainless & Alloy, L.L.C.,	:	
Plaintiff,	:	
	:	
v.	:	
	:	
PHOENIX MECHANICAL,	:	
INC., et al,	:	
Defendants,	:	
	:	
v.	:	
	:	
WASTE MANAGEMENT OF	:	
PENNSYLVANIA, INC.,	:	
Third-Party Defendant.	:	No. 01-784

MEMORANDUM AND ORDER

J. M. KELLY, J.

OCTOBER , 2001

Presently before the Court is a Motion To Dismiss Plaintiff's Rule 14(a) Complaint filed under Federal Rule Of Civil Procedure 12(b)(6) by Third-Party Defendant, Waste Management of Pennsylvania, Inc. ("Waste Management"). The Plaintiff, Motorist Mutual Insurance Company ("Plaintiff") as subrogee of National Stainless & Alloy, L.L.C. ("National"), filed suit in this Court against multiple defendants, alleging negligence to recover the amount it paid to National under an insurance policy. For the following reasons, Waste Management's Motion is denied.

## **I. BACKGROUND**

This subrogation action arises out of a property fire which occurred on March 15, 2000 at 5109 Bleigh Street, Philadelphia ("Property"). National, which incurred loss as a result of the fire, was a sub-lessor of Third-Party Defendant Waste Management, the landlord and owner of the Property. Pursuant to the insurance policy between National and Plaintiff, Plaintiff paid National \$1,635,532.00 for property damage and business interruption loss National suffered as a result of the fire. As National's subrogee, Plaintiff now brings this negligence suit against multiple Defendants seeking to recover the amount it paid to National.

On February 15, 2001, Plaintiff filed a complaint against Phoenix Mechanical Inc. et al ("Phoenix Mechanical"), alleging negligence in the design, engineering, installation, inspection, testing, maintenance, and repair of a sprinkler system at the Property. On May 22, 2001, Defendant Phoenix Mechanical, after denying all allegations of negligence, filed a Third-Party Complaint against Waste Management, alleging Waste Management negligently allowed the fire to originate and failed to properly maintain the sprinkler system which allowed the fire to spread. Waste Management filed an Answer, Cross-claims and a Counterclaim, denying all liability on June 25, 2001.

Plaintiff then filed a Rule 14(a) Complaint against Waste

Management, alleging that Waste Management should be held jointly and severally liable to the Plaintiff for the claims advanced in the original complaint. The Rule 14(a) Complaint further alleges that Waste-Management's negligence in failing to oversee the sprinkler system at the Property and to exercise reasonable care in allowing the fire to occur was the proximate cause of the damages sustained by Plaintiff.

There was, however, a mutual release provision in the lease ("Exculpatory Clause"). Under the sublease between National and KRK Associates, Ltd. Partnership, entered into on October 22, 1999, National, as "sub-tenant, agree[d] to assume all of sub-landlord's obligations as tenant under the main lease . . . ."

Section 5.5 of the main lease states:

Each of the parties hereto hereby releases the other from any and all liability for, or right of recovery against, any loss or damage which may be inflicted upon the property of such party, or which may be claimed for bodily injury or death, even if such claim, loss or damage shall be brought about by the fault or negligence of the other party, its agents or employees.

In addition to the foregoing, Tenant hereby releases Landlord from all claims for loss of profits or earnings as a result of perils included in a standard comprehensive fire or casualty insurance policy or in a business or rent interruption insurance policy. The foregoing release shall apply even if such fire or other casualty shall have been caused by the fault or negligence of Landlord or anyone for whom Landlord is responsible, and shall apply irrespective of whether Tenant is insured for such loss.

Despite the above language, Plaintiff opposes this Motion, alleging that Waste Management violated several National Fire

Protection Association Standards ("NFPA standards") and Philadelphia Fire Prevention Codes which were designed to protect human life, making the Exculpatory Clause in the main lease unenforceable.

## **II. STANDARD OF REVIEW**

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). A court must determine whether the party making the claim would be entitled to relief under any set of facts that could be established in support of his or her claim. Hishon v. King & Spalding, 476 U.S. 69, 73 (1984)(citing Conley, 355 U.S. at 45-46); see also Wisniewski v. Johns-Manville Corp., 759 F.2d 271, 271 (3d Cir. 1985). In considering a motion to dismiss, all allegations in the complaint must be accepted as true and viewed in the light most favorable to the non-moving party. Rocks v. City of Philadelphia, 868 F.2d 644, 645 (3d Cir. 1989)(citations omitted).

## **III. DISCUSSION**

Under Pennsylvania law, three conditions must be satisfied for exculpatory clauses to be held valid: (1) the clause must not contravene public policy; (2) the contract should be between persons relating entirely to their own private affairs; and (3) there must be equal bargaining power between the parties. Topp

Copy Products, Inc. v. Singletary, 626 A.2d 98, 99 (Pa. 1993).

The guiding standards in interpreting exculpatory clauses are as follows:

- 1) the contract language must be construed strictly, since exculpatory language is not favored by the law;
- 2) the contract must state the intention of the parties with the greatest particularity, beyond doubt by express stipulation, and no inference from words of general import can establish the intent of the parties;
- 3) the language of the contract must be construed, in cases of ambiguity, against the party seeking immunity from liability; and 4) the burden of establishing the immunity is upon the party invoking protection under the clause.

Id. In lease provisions, "[a]ll that the law requires in the case of a tenant's waiver of his landlord's responsibility for losses resulting from his negligence is that it shall be plainly expressed." Id. at 101.

Although the language of the Exculpatory Clause plainly expresses the intent to relieve Waste Management from all liability resulting from the fire, the Exculpatory Clause will not be enforced if it contravenes public policy. Contracts violate public policy when they involve matters of interest to the public, including release from liability resulting from violations of statutes, codes or regulations designed to protect human life. Federal Ins. Co. v. Richard I. Rubin & Co., No. CIV.A.92-4177, 1993 U.S. Dist. Lexis 16191, at \*8-9 (E.D. Pa. Nov. 15, 1993)(citing Boyd v. Smith, 94 A.2d 44 (Pa. 1953), which held that an exculpatory clause which relieves the landlord from

liability who violated a statute requiring apartments to be equipped with some sort of fire escape is void as against public policy). Furthermore, exculpatory clauses are void even if the resulting harm is only to property, as long as the violated statutes, codes or regulations were designed to protect human life. Warren City, Inc., v. United Refining Co., 287 A.2d 149, 151 (Pa. Super. Ct. 1971).

In Warren City, the court held invalid an indemnity clause which sought to exculpate the defendant from liability for its negligent installation and maintenance of a gasoline dispensing system in violation of the Pennsylvania State Fire Marshal's regulations. Id. In Federal Insurance Co., the insurance company plaintiff alleged that the defendants, in failing to properly maintain and upgrade a sprinkler system, had violated several safety measures, including building codes, National Fire Protection Association Standards and Philadelphia fire codes. 1993 U.S. Dist. Lexis 16191, at \* 14. The court denied summary judgment because there existed a question of fact as to whether the defendant had violated any statutes or regulations designed to protect human life. Id.

Here, Plaintiff has alleged sufficient facts to survive a Rule 12(b)(6) motion. Plaintiff alleges that the Third-Party Defendant Waste Management violated several NFPA standards and Philadelphia Fire Prevention Codes, which were designed to

protect human life. See Affidavit of James F. Valentine, Plaintiff's Expert Consultant. Assuming for the purposes of this Motion that Waste Management violated standards and codes which were designed to protect human life, the Exculpatory Clause in the main clause is unenforceable since it violates public policy. Therefore, Waste Management may not escape liability by invoking the lease provision.

Accordingly, Third-Party Defendant's Motion to Dismiss is denied.

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PENNSYLVANIA, INC.,	:	
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O R D E R

**AND NOW,** this     day of October, 2001, in consideration of the Motion To Dismiss Plaintiff's Rule 14(a) Complaint (Doc. No. 11) filed by Third-Party Defendant Waste Management of Pennsylvania, Inc., and the Plaintiff's Reply thereto, it is ORDERED that the Motion is DENIED.

BY THE COURT:

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James McGirr Kelly, J.